



**UNITED STATES  
COURT OF APPEALS FOR VETERANS CLAIMS**

**Chambers of  
Chief Judge Ken Kramer**

**625 Indiana Avenue, NW, Suite 900  
Washington, DC 20004-2950  
(202) 501-5886**

April 18, 2003

Executive Board  
The Veterans Consortium Pro Bono Program  
c/o David B. Isbell, Esq., Chairman  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, DC 20044

To the Executive Board:

In order to succeed, an adversarial legal system depends on qualified representation on both sides of the issue. Since its inception, the Pro Bono Program, established by Congress in 1992 at the Court's request and funded annually by a congressional grant, has filled a deep void by providing representation to America's veterans and their survivors who cannot afford or find a qualified person to present their cases to the Court.

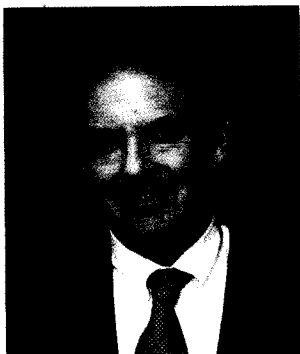
For ten years the Veterans Consortium has been the grantee for this Pro Bono Program, and the Consortium's educational, screening, and mentoring services have received the highest praise from the Legal Services Corporation during peer reviews. A significant number of lawyers who now practice regularly before the Court got their start as volunteer lawyers with the Program. This multiplication of qualified veterans advocates is an important byproduct of the Consortium's effort and a testament to the quality of the Program.

The staff of the Consortium and the 1700 volunteer lawyers throughout the country who have provided much needed appellate representation to some of our most deserving citizens are to be commended for their many achievements over the past ten years.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Kramer", is written over the word "Sincerely".

Kenneth B. Kramer  
Chief Judge



**When we assumed  
the soldier, we did not  
lay aside the citizen.**

**— George Washington**

Address to the New York Legislature, June 26, 1775

# TEN YEARS OF SERVICE TO THOSE WHO HAVE SERVED AMERICA



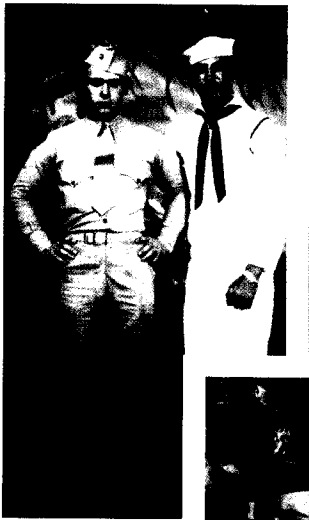
**T**he American government's recognition of an obligation to its military veterans dates back to the Revolutionary War, when the Continental Congress provided pensions for disabled veterans. In the 19th century, veterans assistance programs were expanded to include benefits and pensions not only for veterans, but also for their widows and survivors. The Veterans Administration was created in 1930, when Congress authorized the President to consolidate and coordinate a patchwork system of pension, medical, insurance, and rehabilitation programs. In 1989 Congress elevated the Veterans Administration to a Cabinet-level department and it was renamed the Department of Veterans Affairs (VA).

Since its creation in 1930, the VA has become a very large and complex bureaucracy, and veterans pursuing a claim for benefits have often faced a long and arduous process. They begin with their VA Regional Office or VA Medical Center, and if their claim is denied at that level, they can attempt to navigate the appeal process within the VA, leading to the Board of Veterans' Appeals. Until very recently, however, once that Board had decided the merits of a claim, that was the end of the matter; there was no further appeal, to the courts.

## A Matter of Justice

Although the VA has long been charged with helping veterans and their survivors pursue their claims for benefits, such as compensation for disabilities resulting from military service and support for surviving spouses and children, its appeal process has often been perceived by the veterans involved as perplexing and even adversarial. The lack of any right of further appeal reinforced both this perception and the underlying reality.

The benefits provided by our government to qualifying veterans and their survivors are not perks, however; they have been earned. Lack of judicial review cast a shadow of doubt over whether, when benefits were denied, the decision was fair. Congress remedied the situation in 1988 by passing the Veterans Judicial Review Act, which established the U.S. Court of Veterans Appeals (now the U.S. Court of Appeals for Veterans Claims, and sometimes referred to below simply as the Court). For the first time, veterans and their dependents and survivors would have access to judicial review of VA decisions.



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**The Pro Bono Program  
has represented veterans  
of World War II, Korea,  
Vietnam, and subsequent  
conflicts.**

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With its first case—a veteran representing himself—the new court had a preview of things to come: by 1991 approximately 80 percent of the appellants before the Court were without counsel. This was a major disadvantage for many veterans and survivors with meritorious claims and to the Court in identifying and resolving such claims. Alone, the appellants faced a formidable adversarial system in which the VA was represented by counsel working hard to defend the VA's denial of benefits.

The Court took action to correct this imbalance by creating a program with the goal of ensuring that every time the Court considers a case with potential merit, there's a well-prepared lawyer representing the appellant. This report tells the story of the first ten years of this effort.

## **The Veterans Consortium**

In May 1992, the Court, with congressional approval, provided funds, from its appropriation, to the Legal Services Corporation to solicit proposals to establish and operate a pro bono program to represent appellants in need of representation before the Court. In response, four veterans service organizations—The American Legion, the Disabled American Veterans, the National Veterans Legal Services Project (now Program), and the Paralyzed Veterans of America—offered their combined resources to form the Veterans Consortium. Here was a uniquely capable alliance. As advocates for veterans over many decades, the four organizations shared expertise in veterans law, policy, and the practices of the VA. The

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**Pro Bono Program  
lawyers have worked  
on cases on behalf of  
veterans living in every  
state and the District of  
Columbia, as well as in  
Puerto Rico, Guam, the  
U.S. Virgin Islands,  
Costa Rica, Israel, Italy,  
Mexico, the Philippines,  
Thailand, and Uganda.**

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Consortium also had the expertise to recruit and train volunteer lawyers to represent veterans before the Court.

Legal Services Corporation awarded the pro bono program grant to the Consortium in September 1992, and the Consortium went right to work on the backlog of cases at the Court, placing its first case with a volunteer lawyer trained in veterans law in October of that year.

## **Mission**

The Veterans Consortium Pro Bono Program established as its mission assuring that no veteran or survivor who has taken an appeal to the U.S. Court of Appeals for Veterans Claims, who has a legally credible claim and who wishes to be represented by counsel, will be without competent representation; and to accomplish this by:

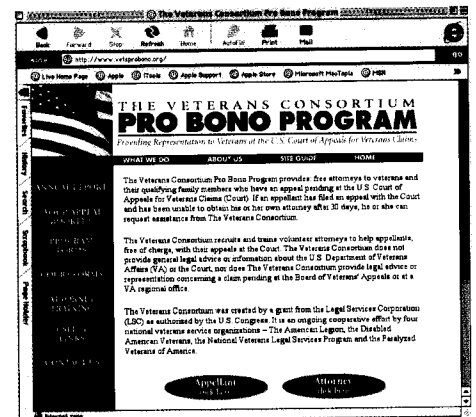
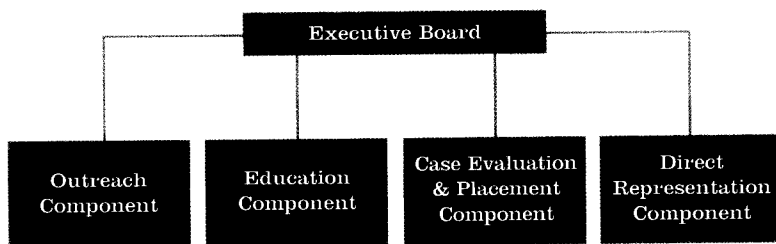
- ★ Recruiting and training volunteer lawyers in veterans law and the procedures of the Court;
- ★ Referring to those lawyers, to handle without cost to the appellants, evaluated cases where there is an issue that should be fully presented to the Court and the appellants are unable to afford counsel; and
- ★ Providing advice and support to the lawyers to whom cases have been referred.

Thus, in the course of its first full year of operation, the Program screened 788 cases, trained 160 lawyers in the basics of veterans law, and provided free representation by those lawyers to 231 appellants who would otherwise have been without a lawyer.

## Organizational Structure

The Pro Bono Program is directed by the Veterans Consortium Executive Board (initially called the Advisory Committee) which consists of five voting and two nonvoting members. Voting members represent each of the Consortium's four veterans service organizations, plus a chairman representing the private bar. The Court and the Legal Services Corporation are each represented by a nonvoting Board member.

The Executive Board develops policy and oversees the directors of the Program's three primary areas of responsibility: Outreach, Education, and Case Evaluation and Placement. In addition, a Direct Representation Component provides representation under contract with the Program in cases that are particularly complicated or that demand immediate intervention to protect an appellant's interests. Lawyers from the Paralyzed Veterans of America currently supply Direct Representation Component services.



**The Pro Bono Program web site, [www.vetsprobono.org](http://www.vetsprobono.org), was launched in 2002 as a resource for veterans and volunteer lawyers.**

**“Mentors lead me to  
the appropriate decisions  
by sending me samples  
of legal documents that  
have been filed.  
They’ve been enormously  
helpful and essential  
in determining our  
course of action.”**

JIM MCKAY

**Senior Counsel  
Covington & Burling  
Washington, D.C.**

## **Outreach and Education**

In 1992, the Pro Bono Program set about attracting capable lawyers and training them—quickly and well—in the essentials of veterans law and the procedures of the Court. Two Program Components, Outreach and Education, made it possible to deliver quality pro bono representation from the outset and have created an ever-widening nationwide network of lawyers with the tools and support they need to succeed at the Court.

- ★ Since 1992, the program has recruited more than 2,000 lawyers from 49 states, the District of Columbia, and Puerto Rico. More than 1,800 lawyers and paralegal representatives have attended the Program’s training classes. These one-day training programs covering veterans laws, rules and regulations, and the Court’s procedures, are offered at no cost to all volunteer lawyers. The Program’s training programs are certified by state bar associations as eligible for continuing legal education credit. Videotapes are made available to lawyers unable to attend live sessions.
- ★ Every lawyer who accepts a referral receives the *Veterans Benefits Manual* in print and as a CD-ROM, with on-line research capability.



## Case Evaluation and Placement

From 1992 through 2002, the Pro Bono Program screened more than 5,000 requests for assistance from veterans or their survivors. The Case Evaluation and Placement Component places the cases meeting Program eligibility requirements with volunteer or Direct Representation Component lawyers, as appropriate. The eligibility requirements are that:

- ★ The veteran or survivor must have an appeal that has been active before the Court for more than 30 days;
- ★ The veteran or survivor must not already be represented by a lawyer and must be financially unable to employ one; and
- ★ There must be a legal argument that can credibly be made on the veteran's or survivor's behalf.

When a qualifying request is received, a veterans law specialist prepares an evaluation memorandum that helps guide the placement process to ensure the best possible fit between a lawyer's experience and the issues in the case. This memorandum also provides a road map for briefing and arguing the case. The Case Evaluation and Placement Component tracks the progress of every case considered by the Program, whether placed with a lawyer or not, as a check on the quality of the case evaluation process.

**“The Veterans Pro Bono Program can only be described as ‘first class.’ Not only are we able to help deserving clients, our younger lawyers receive superb training and valuable experience. Butler Pappas is a strong supporter of the Program.”**

**W. DOUGLAS BERRY**

**Managing Partner  
Butler Pappas Wehmiller Katz Craig  
Tampa, Florida**

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**In ten years, the Pro Bono Program has evaluated over 5,000 cases. In more than 2,000 of them, a veteran or family member was offered pro bono representation.**

★ ★ ★



Each volunteer lawyer is assigned a mentor for consultation and guidance on veterans law and the workings of the Court. The mentor is a lawyer employed by one of the constituent organizations of the Consortium, who is experienced in the law of veterans benefits and in practice before the Court and the VA. The Program also offers moot court sessions, which enable volunteer lawyers to practice and refine their arguments in a setting that closely approximates the Court.

Approximately 40 percent of veterans who ask for assistance are offered pro bono representation, more than 2,000 in the last ten years. And many of the appellants whose cases are found not to be eligible for Program representation have nonetheless been offered useful advice about their appeals and their VA benefits claims. Program support has helped the volunteer lawyers achieve a 75 percent success rate, and 95 percent of lawyers who have accepted a case from the Pro Bono Program say they would do so again.

## **Oversight**

The Legal Services Corporation (LSC) is responsible for oversight of the operation of the Pro Bono Program. LSC has a nonvoting representative on the Board who monitors the Program's expenditures of appropriated funds and from time to time provides advice and assistance. Periodically, LSC also sponsors a detailed peer review conducted by independent lawyers and other experts, resulting in both suggestions and evaluations

of the Program's operations. The overall evaluation of the Program is reflected in the following comments from the most recent peer review report (early 2002):

★ **"The Consortium is a remarkable program in that it has brought together four veterans services organizations...to form the Consortium. It is rare in our experience for organizations, all of which have their own goals and mission, to come together and establish such a highly productive program. Another impressive aspect of the Program is that the components work so smoothly together. The coordination and cooperation between the components is noteworthy."**

★ **"The Board is extremely knowledgeable and dedicated to the Consortium.... The quality of the case evaluations appears high, the supervision of the work is systematic and very professional, and the placement of cases is expertly done.... The training materials are very impressive and the pro bono attorneys and the D.C. Bar Training Coordinator we spoke with strongly praised the training the office provided.... The Direct Representation Attorney also impressed us with her knowledge and enthusiasm."**

★ **"The team found no significant weaknesses with the Veterans Consortium Pro Bono Program. We believe that the Consortium is well-run, very effective and efficient, and [we] applaud the work of the staff, volunteers, and Board."**



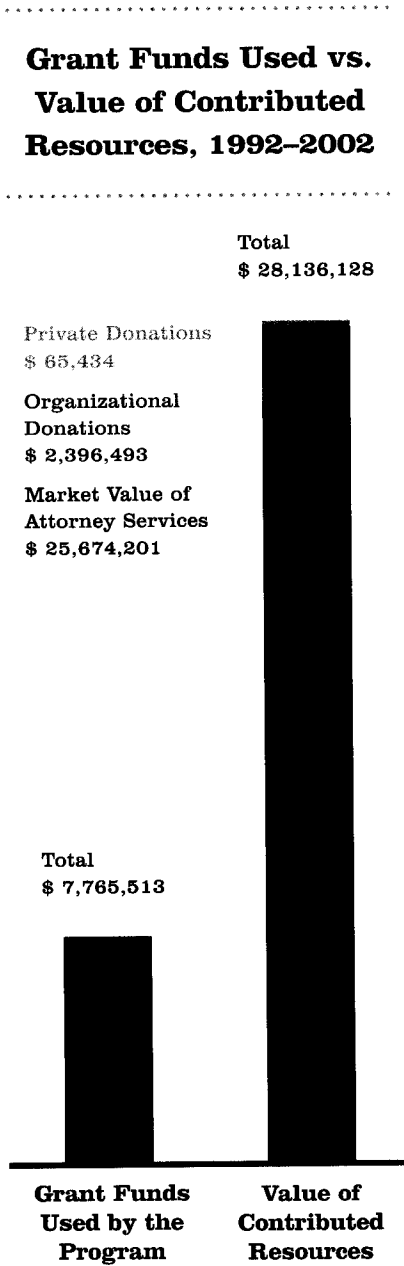
## **Fulfilling Our Mission**

In its first ten years, the Pro Bono Program has recruited and trained over 1,800 lawyers to represent veterans and their survivors in appealing the VA's denial of their benefits claims. The Program has evaluated more than 5,000 cases and referred more than 2,000 to participating lawyers. And the Program has advised and supported its volunteer lawyers in rendering more than \$25 million worth of legal services to veterans who would otherwise not be able to afford counsel.

While the bulk of the funds necessary to operate the Pro Bono Program are appropriated by Congress, each of the Consortium's constituent organizations provides substantial support, in additional funds or services, which now total almost \$2.5 million. Furthermore, the market value of the free legal services provided by Program lawyers on behalf of their veteran clients has exceeded the public funds supporting the Program by a factor of 3.6, as illustrated by the bar chart on the facing page. This combination of public and private effort is a notable instance of modest public funding being significantly multiplied by the generosity of the private sector, resulting in a substantial benefit to America's veterans.

An important by-product of the Pro Bono Program's first ten years of operation has been a very substantial expansion of the veterans law bar—a legal community that is well-versed in veterans benefits law and experienced in the procedures of the VA and the U.S. Court of Appeals for Veterans Claims. As a result, an increasing portion of the appellants before the Court are able to retain counsel on their own, though there remain many who cannot afford counsel and must depend on the Program to arrange pro bono representation.

Ultimately, the most important measure of the Program's accomplishments in its first decade is found not in statistics, but in the impact on the lives of veterans and their survivors that it has helped. The stories of their struggles to have their claims fully and fairly heard and of the many extraordinary efforts of volunteer lawyers and Program staff offer a more complete picture of the Program's value and success.



# JUST CAUSES: THOSE WHO FOUGHT AND THE LAWYERS WHO FIGHT FOR THEM



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**S**eeing a claim for veterans benefits through to its conclusion is not for the fainthearted. By the time a veteran's case reaches the Court and the Pro Bono Program, the veteran and his or her family have already endured a lengthy, complicated process that has resulted in at least one rejection by the Board of Veterans' Appeals. For them, the U.S. Court of Appeals for Veterans Claims is usually the court of last resort.

Lawyers, too, must be prepared for the possibility of an extended campaign, albeit with the support and considerable resources of the Veterans Consortium. Appeals can drag on. There's a lot of research to be done, and yet lawyers keep volunteering and, more significantly, re-enlisting. They go the extra mile, just as so many of their clients did when their nation called.



## Vindication for a Vietnam veteran

**C**rewing amphibious landing craft ("Mike" boats) to supply U.S. forces in the Mekong Delta in 1967, army specialist Calvin Lotts and his squad were often the objects of enemy fire. They operated in enemy-infested areas to supply logistical support to the 9th Infantry Division. Mr. Lotts's unit was among the first to arrive at Dong Tam base, a center for significant offensives in 1967 and a source of incessant artillery barrages against nearby enemy positions.

When he returned home to Virginia, Mr. Lotts began fighting post-traumatic stress disorder (PTSD). He applied to the VA for health and disability benefits based on his wartime experience. Although Mr. Lotts was ably assisted by the Virginia Department of Veterans' Affairs representative, John Layman, his claim was denied.

The VA and its Board of Veterans' Appeals repeatedly asserted there were no records of Mr. Lotts having been exposed to combat; therefore, his PTSD could not be service-connected. He appealed to the U.S. Court of Appeals for Veterans Claims and sought assistance from the Pro Bono Program.

Volunteer lawyers James A. Hughes, Jr., and Jesse D. Watters, III, of the McLean, Virginia, office of Patton Boggs, set out to verify Mr. Lotts's account. Following an exhaustive search through the National Archives and dozens of interviews and Internet searches, the lawyers were able to confirm the significant dates and places of Mr. Lotts's service. They also established that a lot of fighting was going on at those times, in the places where he had served.

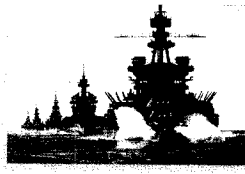
Their brief to the Court—the product of hundreds of hours of painstaking research—verified the accuracy of Mr. Lotts's recollections. The Court remanded the case to VA, which agreed that Mr. Lotts's disability was service-related, qualifying him for benefits.

"It's peace of mind," says Mr. Lotts.

Calvin Lotts is grateful for the hard work of

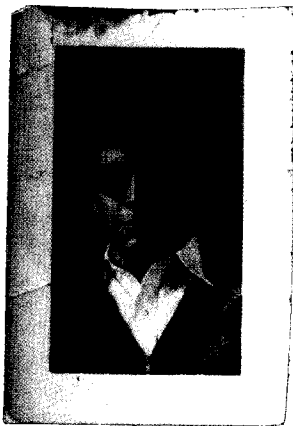
Mssrs. Watters and Hughes and their firm. The long-overdue monthly checks will be welcome. Most of all, for Mr. Lotts, his service and the price he paid have finally been acknowledged.





## A widow who wouldn't give up

**F**or a dozen years following her husband's death, Mrs. Joy Campbell campaigned to obtain some portion of the benefits that had never been granted to Charles M.



Campbell during his life. As a member of the U.S. Navy Medical Corps serving in the South Pacific in World War II, Mr. Campbell contracted rheumatic fever and was discharged in

1945, his health permanently impaired. Still, his application for VA disability benefits was rejected.

After Mr. Campbell's death in 1988, Joy Campbell again went to the VA. "I was ready for discouragement," she said, and in fact, the VA persistently refused to acknowledge that Mr. Campbell's decades-long health problems were the result of his military wartime service.

When the case finally came before the U.S. Court of Appeals for Veterans Claims, the Consortium offered Mrs. Campbell

representation. "For the first time, I felt someone was going to help me," she said. Mrs. Campbell credits her lawyer, Michael P. Horan, for painstakingly recreating her husband's service record and medical records, establishing her claim for dependency and indemnity compensation benefits.

In 1998, the Court remanded Mrs. Campbell's case to VA, which finally granted her dependency and indemnity benefits for life, finding that her husband's heart disease contracted in the Pacific contributed significantly to his death. Although she continues to work because she can and must, this modest benefit allows her to live a little more comfortably.

Regarding the resolution with VA, which allows a monthly payment plus medical and other benefits, she says, "I will be able to live. It's as simple as that."







## A veteran and his lawyer go the distance

**W**hile air force veteran Oliver Jaquay was serving on the fire crew at the U.S. base in Labrador, Canada, in 1954–55, a KC-97 refueling tanker crashed during takeoff. As Mr. Jaquay was assisting in the rescue

of the flight crew, there was a terrific explosion. Miraculously, he wasn't killed or maimed, but his hearing was permanently damaged, and he was discharged from the Air Force with a 30 percent disability

rating. However, as the years passed, the hearing loss became more profound.

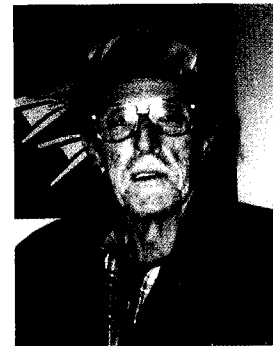
In 1993, the Board of Veterans' Appeals (BVA) denied his request for an increased disability rating, and he asked the Board to reconsider its decision. Mr. Jaquay mistakenly sent his request for reconsideration not to the BVA in Washington, but rather to his local VA Regional Office, where it languished for some ten months. Finally, it was forwarded to the BVA and ultimately was denied. He subsequently appealed to the Court.

Mr. Jaquay sought assistance from the Pro Bono Program, and his case was referred to Thomas Stoever of the Denver, Colorado, law firm of Arnold and Porter.

Mr. Stoever argued that the VA had a duty either to forward the request to the BVA in a timely fashion, or to return it to the veteran, with instructions as to its proper filing. The U.S. Court of Appeals for Veterans Claims dismissed Mr.

Jaquay's case because he had not filed his appeal within 120 days of the original BVA decision. Undaunted, Mr. Stoever took a further appeal to the U.S. Court of Appeals for the Federal Circuit. After briefing and argument before a panel of that Court, the matter was rebriefed and reargued before the entire Court, sitting *en banc*. The Federal Circuit ruled that a veteran who mistakenly files a request at the same VA Regional Office from which the claim originated actively pursues his judicial remedies,

despite the defective filing. The case is now pending before the U.S. Court of Appeals for Veterans Claims. It has taken Mr. Jaquay over eight years to get to this point, but his case set an important precedent for other veterans.

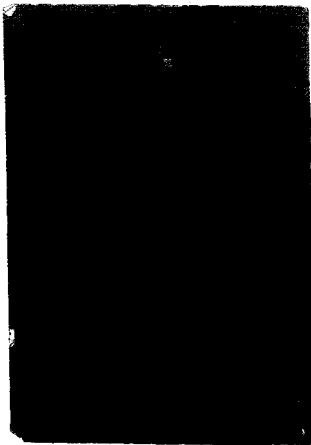


Mr. Stoever's long-term commitment to his case was "an inspiration to me," says Mr. Jaquay.



## A marine's toughest campaign

**J**oseph Krafchick is a Marine Corps veteran of the Pacific island-hopping campaign of World War II, which included the battles at Guadalcanal, Anguar, and Palau/Peleliu. He was 21 when he was discharged in 1946. Mr. Krafchick's records show that he was already suffering from acute enteritis—a precursor to colitis—when he left the military. By 1950 he was sick with ulcerative colitis.



From the mid-1960s on, Mr. Krafchick attempted to establish that his illness was service-related. His physician—who fully understood the severity and source of his illness—testified on his behalf, and other

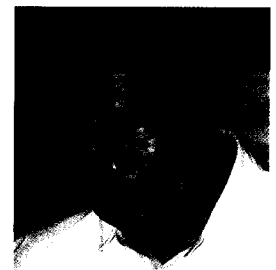
doctors wrote letters. In August 1979, "The colitis got the best of me, I had to quit working." He was 54.

In 1994, Mr. Krafchick's case came before the U.S. Court of Appeals for Veterans Claims, and he was offered representation through the Pro Bono Program. Linda Blauhut was assigned the case through the Program's Direct Representation Component.

Incomplete and inaccurate records were partly to blame for Mr. Krafchick's difficulties. During case evaluation, that Component's director, Brian Robertson, was able to identify the hull number of the Landing Ship, Tank (LST) that transported Mr. Krafchick during the Pacific campaign. This opened the door to further discovery of medical records and other evidence supporting Mr. Krafchick.

The agency appeals process demands that veterans produce new evidence to reopen a previously denied claim. Ms. Blauhut argued, successfully, that only by reviewing the entire record, in addition to the new evidence, can a claim such as Mr. Krafchick's be judged fairly. The Court's acceptance of this change represented a breakthrough not only for Mr. Krafchick, but for all veterans in similar circumstances.

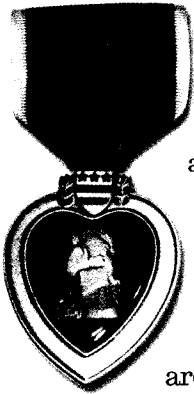
The Court remanded the case to VA, which in 1995 agreed that Mr. Krafchick's disability began during his military service, thus permitting payment of the benefits he had sought for nearly thirty years.





## A veteran's fight for his daughter

**N**avy veteran Charles Jones was awarded three Purple Heart medals for his service in Vietnam (1965–71). He was also exposed to the defoliant Agent Orange.



In 1996, Congress passed the Agent Orange Benefits Act, which authorized benefits for any child born with spina bifida after a veteran parent had served in Vietnam. Spina bifida is a birth defect where the spine fails to close properly around the spinal cord.

Ten years earlier, Michelle Jones had been born with occipital encephalocele (OE)—a hernia of the brain through a defect in the lower skull—which both her neonatologist and pediatric neurosurgeon classified as a variety of spina bifida in the superior part of the spine.

In January 1998, the Joneses applied to VA for their daughter's benefits as provided by the Agent Orange Benefits Act. The VA Regional Office turned them down. Appealing the decision, Mr. Jones offered the opinions of five doctors testifying that OE is indeed a type of spina bifida. Even VA's own chief of public health wrote that

Michelle's condition was within the scope of the Agent Orange legislation. But in 1999, based on an opinion issued by the VA General Counsel, the Board of Veterans' Appeals (BVA) rejected Michelle's claim.

Mr. Jones appealed to the Court, and his case was accepted by the Pro Bono Program and assigned to Michael P. Horan. He argued that the VA General Counsel had failed to consider the statutory language that "all forms and manifestations" of spina bifida were to be covered by the act and that the clear intent of the legislation was to provide for children like Michelle Jones. What's more, said Mr. Horan, the Supreme Court had previously ruled that in cases where there is interpretive doubt regarding legislation, the VA must rule in favor of veterans.

In August 2002, the Court vacated the BVA's decision and effectively overruled the VA General Counsel, remanding the case to the VA for further consideration.





## The long road back from Vietnam

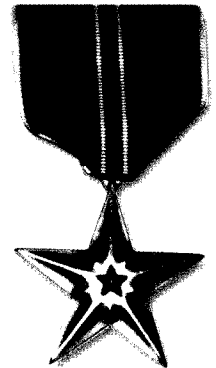
**H**is combat service in Vietnam from 1969 to 1970 earned this army veteran, who prefers to remain anonymous, the Bronze Star. While in Vietnam, he contracted malaria, which triggered the onset of Guillain-Barré syndrome, an inflammation of the peripheral nerves resulting in rapid paralysis of arms, legs—even breathing muscles. Desperately ill, he was evacuated to a military hospital in Japan where he struggled for his life. The young soldier eventually recovered, but the emotional scars persisted.

He was discharged from the army with a 30 percent disability rating. His psychiatric problems worsened with time, and in the early '90s he applied for an increase in benefits. VA denied his claim on the grounds that his current difficulties could not be conclusively tied to his wartime experiences.

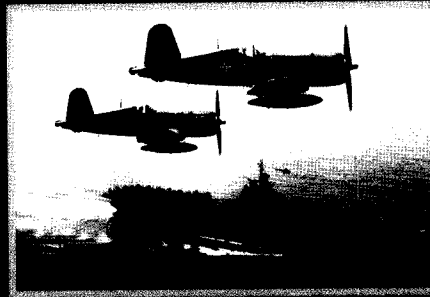
Having been turned down by the Board of Veterans' Appeals, the veteran appealed

to the Court and sought assistance from the Pro Bono Program.

For nearly three years, volunteer lawyer Leo Dombrowski, of the Chicago law firm Wildman, Harrold, Allen and Dixon, represented the veteran. He located the original treating physician, who remembered the case and agreed to submit an affidavit substantiating the traumatic nature of the veteran's illness and his treatment. The veteran's psychiatrist also submitted an affidavit. Presented with the full medical record, VA lawyers agreed not to litigate the case. The Court then vacated the Board of Veterans' Appeals earlier decision, and a settlement was ultimately reached at the agency level.



Mr. Dombrowski was able to win a 100 percent disability rating for his client, with accompanying benefits awarded retroactive to 1991.



EXECUTIVE BOARD AND STAFF

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FINANCIAL STATEMENTS

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LAW FIRMS AND OTHER ORGANIZATIONS  
CONTRIBUTING LAWYERS' SERVICES TO THE PROGRAM

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PARTICIPATING LAWYERS